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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2638 OF 2007

Shaikh Dilip Maqbool ...Petitioner
V/s.
Maharshi Vivekananda Samaj Kalyan
Saunstha & ors. ...Respondents

Mr. I.M.Khairdi for the Petitioner
Mr.S.S.Shah for Respondent Nos. 1 & 2

CORAM : B.H.MARLAPALLE,J.
DATED : 3rd December, 2007

P.C.

Heard Mr. Khairdi, the Learned Counsel for the Petitioner who is an Assistant Teacher in the School run by the Respondent No. 1 Society. He had filed Appeal No. 7/2004 before the School Tribunal alleging illegal termination of service orally w.e.f. 30-12-2003. The Tribunal held that there was no termination of service as alleged or any case of otherwise termination of service and, therefore, there was no cause of action arising under Section 9 of the MEPS Act, 1977. This Judgement and order dated 10-10-2006 dismissing the applicant is impugned in this petition under Article 227 of the Constitution.

2. The Tribunal noted that the appellant was in the habit of filing frivolous complaints against the management and one such appeal was Appeal No. 27/2003.

The management filed reply and the appellant reported for duty and the appeal was disposed. Second time the Petitioner filed Appeal No. 7/2004. Admittedly, the appellant was on medical leave from 7-11-2003 to 27-12-2003. He claimed that when he went to report for duty on 28-12-2003, he was not allowed and, therefore, he had to send his joining report by post. He also claimed that he had sent a representation to the Education officer on or about 20-1-2004. On the said notice the management appeared and presented the purshis on 8-4-2004 stating that the appellant was not removed from service. The management also adderessed a letter dated 21-1-2004 to the Education Officer (Secondary) Zilla Parishad informing that Complainant had made out a false case. He was in the habit of initiating labour proceedings against the management before different Courts. The Learned Presiding Officer of the School Tribunal while dismissing the appeal accepted the contentions of the management that it was the appellant who had remained absent and, therefore, there was no case of any termination of service. Mr. Khairdi, the Learned Counsel for the Appellant submitted that he has been reinstated w.e.f. 14-7-2004 and his grievance regarding the payment of salary from January 2004 till the date of reinstatement i.e. 14-7-2004 requires consideration.

3. I do not find any substance in this submission.

The purshis filed by the management is dated 8-4-2004 and nothing prevented the appellant to state before the Tribunal that he was ready and willing to report for duty immediately. He did not take any steps. The Education Officer filed his reply on 9-5-2006. Under these circumstances and more particularly when the School Tribunal has held that there was no termination of service, it was necessary for the appellant to immediately report for duty in response to the purshis filed on 8-4-2004 by the management. The Tribunal considered all the aspects and dismissed the complaint and did not address to the issue of payment of salary for the intervening period.

4. The reasoning set out by the School Tribunal cannnot be termed as perverse or patently erroneous. In the facts and circumstances of the case, I am satisfied that this petition for the payment of backwages for a period of six and half months does not require consideration. Hence, the Petition is rejected summarily.

5. Civil Application does not survive.

[B.H.MARLAPALLE,J.]